

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHARLES LIGGINS,

NOTICE OF REMOVAL

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER
MICHAEL AMELLO and POLICE OFFICERS
JOHN DOE 1-5,

Defendants.

X

**TO: THE UNITED STATES DISTRICT COURT,
EASTERN DISTRICT OF NEW YORK**

Defendants THE CITY OF NEW YORK and POLICE OFFICER MICHAEL AMELLO
(hereinafter referred to as "Defendants") by and through their attorney, Zachary W. Carter,
Corporation Counsel of the City of New York, respectfully show this Court as follows:

1. On February 16, 2017, plaintiff CHARLES LIGGINS (hereinafter referred to as "Plaintiff") commenced the above-captioned civil action in the Supreme Court of the State of New York, County of Kings, of which a trial has yet to be held. A copy of plaintiff's Summons and Complaint is annexed hereto as **Exhibit "A."**
2. On or about February 22, 2017, plaintiff served a Summons and Complaint upon the Defendant City, naming "THE CITY OF NEW YORK and POLICE OFFICER MICHAEL AMELLO" as defendants and setting forth the claims for which this action is based.
3. On or about March 3, 2017, an Answer was duly interposed on behalf of the Defendant City; a copy of which is annexed hereto as **Exhibit "B."**

4. Upon information and belief, on April 6, 2017, the plaintiff served a Summons and Complaint upon Defendant P.O. Amello, setting forth the claims for which the action is based. Annexed hereto as **Exhibit “C”** is copy of the Affidavit of Service.

5. To date an Answer has not been interposed on behalf of Defendant P.O. Amello.

6. Plaintiff brings this lawsuit, alleging *inter alia*, that defendants violated “plaintiff’s rights as secured by the Civil Rights Act, 42 U.S.C. §§ 1982, 1983 and 1985, and of rights secured by the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.” See Verified Complaint, **Exhibit A**, ¶ 1.

7. The above-captioned action is a civil action of which the United States District Court has original jurisdiction pursuant to 28 U.S.C. § 1331, in that it alleges claims arising under the laws of the United States. The action is therefore removable to the United States District Court without regard to the citizenship or residence of the parties, pursuant to 28 U.S.C. § 1441(b).

8. Furthermore, since the state and federal claims within plaintiff’s Complaint arise out of a common nucleus of operative facts, namely, the alleged police conduct during plaintiff’s arrest and subsequent prosecution, both state and federal claims form part of the same case or controversy under Article III of the United States Constitution, and therefore this Court’s exercise of supplemental jurisdiction is appropriate. See Rosario v. Amalgamated Ladies’ Garment Cutters’ Union, 605 F.2d 1228, 1247 (2d Cir. 1979) (both state and federal claims were linked by the hostility of Union officials toward appellees’ assertion of their § 101 rights); see also Dunlop v. City of New York, 2006 U.S. Dist. LEXIS 72315 (S.D.N.Y. 2006) (plaintiff’s state and federal claims arise out of a common nucleus of operative facts).

9. This Notice of Removal is timely because it is being filed within thirty (30) days after service of the initial pleading upon defendant, P.O. Amello. See 28 U.S.C. § 1446(b); see also Exhibit C.

10. In the context of removal under 28 U.S.C. § 1441(a), the requirement of unanimity does not extend to un-served, let alone unidentified “JOHN DOE” defendants. See Varela v. Flintlock Constr., Inc., 148 F. Supp. 2d 297 (S.D.N.Y. 2001); see also Bowen v. Home Depot, 2001 U.S. Dist. LEXIS 12100 (E.D.N.Y. 2001).

11. Defendants will promptly file a copy of this Notice of Removal with the Clerk of the state court in which the action has been pending.

WHEREFORE Defendants THE CITY OF NEW YORK and POLICE OFFICER MICHAEL AMELLO respectfully request that this action be removed from the Supreme Court of the State of New York, County of Kings, to the United States District Court for the Eastern District of New York.

Dated: New York, New York
May 5, 2017

Respectfully Submitted,

ZACHARY W. CARTER
Corporation Counsel of the City of New York
*Attorney for Defendants, City of New York and
Police Officer Michael Amello*
100 Church Street
New York, NY 10007
Tel.: (718) 620-1023

By: /s/
Julie A. Ortiz (JR-1817)
Assistant Corporation Counsel

TO: Law Offices of Wale Mosaku, P.C.
Attorneys for Plaintiff
25 Bond Street, 3rd Floor
Brooklyn, New York 11201
(718) 243-0994

AFFIRMATION OF SERVICE

State of New York :

SS:

County of New York :

The undersigned, an attorney duly admitted to practice in the courts of the New York shows that she is employed in the office of the Corporation Counsel of the City of New York and affirms this statement to be true under the penalties of perjury pursuant to Rule 2106 of the CPLR:

That on the 5th day of May, 2017, she served the annexed **NOTICE OF REMOVAL, AFFIRMATION CONCERNING REMOVAL and CIVIL COVER LETTER** upon:

Law Offices of Wale Mosaku, P.C.
Attorneys for Plaintiff
25 Bond Street, 3rd Floor
Brooklyn, New York 11201
(718) 243-0994

being the address within the State theretofore designated by him/her for that purpose, by causing to be deposited a copy of the same, enclosed in a prepaid wrapper in a post office box situated at 100 Church Street in the Borough of New York, City of New York, regularly maintained by the Government of the United States in said City.

Dated: New York, New York

May 5, 2107

/s/
JULIE A. ORTIZ (JR-1817)
Assistant Corporation Counsel